

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

YNES AGUERO JR. §
v. § CIVIL ACTION NO. 6:09cv124
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Ynes Aguero, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of prison disciplinary action taken against him. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Aguero complains about a disciplinary conviction which he says that he received in 2003. He says that he was accused of assaulting an officer by “touching the officer’s arm with my finger, and making sexual contact with my eyes.” He did not appeal the conviction because he says that he was told that “you better not file grievances.” As punishment, Aguero says that he received 15 days of solitary confinement, 45 days of cell and commissary restrictions, a year in medium custody, and the loss of 208 days of good time and 208 days of work time credits. Aguero concedes that he is not eligible for release on mandatory supervision.

After review of the pleadings, the Magistrate Judge issued a Report on March 30, 2009, recommending that the petition be dismissed. The Magistrate Judge determined that Aguero had not exhausted his administrative remedies, as shown by his concession that he did not appeal the disciplinary conviction through the grievance procedure. The Magistrate Judge also stated that the statute of limitations had expired on Aguero’s claims, and that his petition lacked merit because he

failed to show the deprivation of a constitutionally protected liberty interest. Consequently, the Magistrate Judge recommended that the petition be dismissed with prejudice and that Aguero be denied a certificate of appealability *sua sponte*.

Aguero received a copy of the Magistrate Judge's Report on April 3, 2009. He filed a motion for extension of time in which to object to this Report, which was granted; Aguero was given until May 22, 2009, in which to file his objections. However, no objections have been filed, despite having more than ample time in which to do so; accordingly, Aguero is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge dated March 30, 2009 (docket no. 9) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Ynes Aguero Jr. is hereby DENIED a certificate of appealability *sua sponte*. Alexander v. Johnson, 211 F.3d 895, 898 (5th Cir. 2000). Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 27th day of May, 2009.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**